



AUG - 4 2014

The Honorable Kyrsten Sinema
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Sinema:

Thank you for your June 6, 2014, letter cosigned by 13 other Members of the House of Representatives to the Department of the Army and the U.S. Environmental Protection Agency regarding the agencies' proposed rulemaking to clarify the term "waters of the United States." We are responding on behalf of Secretary of the Army John M. McHugh and EPA Administrator Gina McCarthy. We understand your concerns and look forward to working with you and with the American public to respond to questions and comments about the agencies' joint rulemaking.

Your letter raises specific questions about the agencies' proposed rule clarifying the regulatory definition of "waters of the United States." This rule is important because it establishes the geographic scope for all Clean Water Act (CWA) programs. The agencies' primary goal in developing the proposed rule is to clarify protection under the CWA for streams and wetlands that form the foundation of the nation's water resources. We believe the proposed rule is fully consistent with the CWA and case law, provides needed clarity, and is based on the best-available science.

We want to emphasize that the rule currently undergoing public review is a proposal. Consistent with the provisions of the Administrative Procedure Act, we will carefully evaluate all public comments received on the proposed rule, including yours, and make necessary changes before the rule is made final. This transparent public process will help to assure the final rule provides the clarity, certainty, and consistency the public demands and to make all provisions of the final rule fully consistent with the law and science, including decisions of the Supreme Court.

It is also important to recognize that the proposed rule would not expand the historic scope of the CWA, nor cover any types of waters not previously subject to the Act in the 1970s, 1980s and 1990s. We agree that Supreme Court decisions since 2001 have resulted in reducing the scope of waters that may be protected and we have worked hard to reflect these changes in the proposed rule. The result of this rulemaking will be to reduce the geographic scope of waters protected by the CWA compared to the rule it replaces.

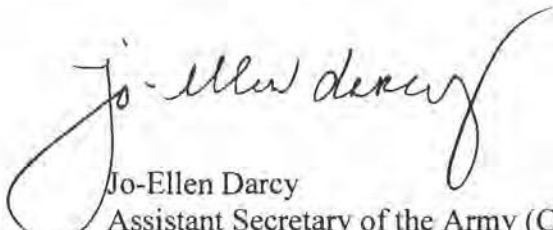
The proposed rule would not declare all hydrological connections significant. The rule would identify specific types of waters that meet Justice Kennedy's significant nexus test, but also identify, for the first time, waters that are never protected by the Act. The rule would also

clarify that all "other waters," which includes millions of acres of wetlands nationwide, remain subject to the individual significant nexus analysis your letter supports. We believe the result of these improvements will be to make the process for determining CWA jurisdiction more transparent, clearer, and more consistent, while saving permit applicants time and reducing costs.


Finally, your letter raises concern about the scientific report on which the proposed rule relies. We strongly agree that all waters do not meet Justice Kennedy's "significant nexus" test and the proposed rule reflects this. We are working to ensure that the rule is consistent with Supreme Court decisions that narrow the scope of CWA jurisdiction and that the rule provides the predictability, transparency, and timeliness in the permitting process that applicants deserve. The EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence" presents a review and synthesis of more than 1,000 pieces of peer reviewed scientific literature, and is currently undergoing independent peer review by the EPA's Science Advisory Board (SAB). As the agencies have emphasized, the proposed rule will not be finalized until the SAB review is complete and the EPA develops a final version of the scientific assessment based on SAB and public input.

Thank you again for your letter. An identical copy of this response has been sent to the other signers of your letter. We look forward to the ongoing input from you and your constituents during the public comment period on the proposed rule. If you have any questions, your staff may contact Mr. Chip Smith in the Office of the Assistant Secretary of the Army (Civil Works) at charles.r.smith567.civ@mail.mil or (703) 693-3655, or Mr. Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836.

Sincerely,



Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army



Nancy K. Stoner
Acting Assistant Administrator
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